IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-238

RONALD DICK,

Petitioner,

v.

THE UNITED STATES,

Respondent.

MOTION FOR LEAVE TO FILE AND PETITION FOR WRIT OF PROHIBITION

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Petitioner asks leave of the Supreme Court to file for a Writ of Prohibition against present and future improper use of the medical diagnosis of the case, *Dick v. U.S.*, 339 F. Supp. 1231, against petitioner in res judicata, USDC(MD) H-77-129, and in violation of Civil Service Regulations in the Federal Personnel Manual: CSCFPM 752-1-3(c), use of security clearance information; and CSCFPM 752-1-3(d), use of information known prior to hiring by agency at a later time, as is now being done in proceedings in the 4th Circuit, USCA(4) 78-1400, (C/A 76-512).

The effect of such Writ of Prohibition on the use of the old medical diagnosis will be to leave the Civil Service

Commission with no legal grounds to have executed the disability retirement of petitioner. The writ is most easily constructed by ordering the removal from the petitioner's records of the fraudulant report of Social Security Administration doctor, James Wellhouse, *U.S. v. Wellhouse,* USCA(DC) 78-1350, (C/A 78-0001).

Relief cannot be found in the 4th Circuit because records were used against petitioner in that Circuit before he discovered "the heart of the matter" in that Circuit, the reuse of medical diagnosis in *Dick v. U.S.,* 339 F. Supp. 1231 by SSA doctor James Wellhouse. The record in the 4th Circuit ignores the doctrine of res judicata even though the *Dick v. U.S.* case was settled by agreement in USCA(DC) #72-1801.

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PETITION FOR WRIT OF PROHIBITION

OPINION IN THE COURTS BELOW AND CSC REGULATIONS.

This petition by petitioner is based on the agreement reached between petitioner's attorney, Donald Dalton, and respondent is closing Dick v. U.S., 339 F. Supp., 1231, and Civil Service Regulations in the Federal Personnel Manual: CSCFPM 752-1-3(c), use of security clearance information; and CSCFPM 752-1-3(d), use of information known prior to hiring by agency at a later time. The agreement was that petitioner had legally won his case. Moreover, since he was working for another agency of the Federal Government (Social Security Administration), there was no need to obtain a final conclusion in 1972 about the medical diagnosis of 1968 by the Defense Department Doctor, Louis Linn, and its effect on his security clearance. (See also the administrative opinion of Social Security Judge M. Werth in USDC(MD) H-77-129.) (See page 11a also)

GROUNDS OF SUPREME COURT JURISDICTION.

Under 28 U.S.C. §1651(a) or 28 U.S.C. §2241, the lack of power of the District of Columbia Circuit in the 4th Circuit (CONFLICT OF CIRCUITS), the common law grounds of res judicata as this case was closed November, 1972, and the desire for parsimony of litigation by use of Rule 30 of the Supreme Court, petitioner finds that while respondent did not break any agreement, the diagnosis of the respondent's doctor Louis Linn has been reported in error or fraud as a new diagnosis by Dr. James Wellhouse, USCA(DC) 78-1350, to cause petitioner problems in the 4th Circuit.

QUESTION PRESENTED FOR WHICH WRIT SHOULD BE GRANTED.

Petitioner contends that while the United States for the District of Columbia cannot prohibit the reuse of the old medical diagnosis in the 4th Circuit, petitioner asks:

CAN THE SUPREME COURT AT LEAST ORDER THE PROCEEDINGS IN THE 4TH CIRCUIT, NOW AT USCA(4) 78-1400, TO SPELL OUT WHAT IN THE SOCIAL SECURITY DOCTOR'S, JAMES WELLHOUSE, REPORT ON PETITIONER IS A NEW DIAGNOSIS UNRELATED TO *Dick v. U.S.*, 339 F. Supp. 1231, and PROHIBIT WHAT IS A REUSE OF THE OLD DEFENSE DEPARTMENT DOCTOR'S DIAGNOSIS OF THE PETITIONER ON THE GROUNDS OF RES JUDICATA AND CIVIL SERVICE COMMISSION REGULATIONS IN THE FEDERAL PERSONNEL MANUAL: CSCFPM 752-1-3(c), "Reasons or charges relying upon security requirements (withdrawal or denial of a clearance) must not be used to support a proposed action . . . ."; and CSCFPM 752-1-3(d), "If an agency hires an applicant with full knowledge of certain facts concerning his fitness, it may not properly propose adverse action against the employee on the basis of the same facts at a later date . . . . That does not mean, of course, that if the employee commits a new offense the agency should not consider his past record."?
(Petitioner believes all of the Wellhouse diagnosis is old. Hence, under CSCFPM Regulations the proceedings in the 4th Circuit are without legal merit.)

CONSTITUTIONAL MATTERS.

In this case petitioner confronted government Dr. Louis Linn so the Court could see his diagnosis was not as possible as the doctor for petitioner, David Trachtenberg. On what appears to be the same medical diagnosis, petitioner cannot confront Social Security Doctor James Wellhouse except for one question in USDC(MD) H-77-129:
QUESTION: What onset date did Wellhouse discover?
ANSWER: Wellhouse knows of no onset date; therefore there is evidence that needs further examination that Wellhouse is reusing the Defense Department Doctor Linn's diagnosis against CSC Regulations, CSCFPM 752-1-3(c) and CSCFPM 752-1-3(d).

Also, in the opinion of this case, Dick v. U.S., 339 F. Supp. 1231, Judge Gasch raised religious grounds against Dr. Linn's medical opinion; if Dr. James Wellhouse is dealing with the same problem, then he has caused violations similar or the same as Dr. Linn of this petitioner's constitutional rights.

STATEMENT OF CASE FOR WRIT OF PROHIBITION.

This case was based on the refusal of the Secretary of Defense to grant petitioner his fourth secret clearance because of careless misunderstandings by a government psychiatrist, Louis Linn. Because of the clearance refusal, petitioner took a new position in 1968 with the Social Security Administration. The Operations Research Staff on which petitioner worked was eliminated on June 30, 1973, but petitioner was never transferred legally. Instead, the old Department of Defense medical diagnosis of Louis

Linn was made again by SSA Doctor James Wellhouse. However, the Wellhouse diagnosis was withheld on medical grounds from petitioner for seven months (11/74-6/75) while the Social Security Administration and the Civil Service Commission with the records of this case as part of their record proceeded on a disability retirement action. This action was executed on July 11, 1975, on grounds already made res judicata by the closing of this case in 1972. Never-the-less, in the 4th Circuit proceedings CSC Judge Kerr and District Court Judge Harvey ignored time, sworn testimony, this case and other evidence in petitioner's favor, (Opinion in USDC(MD) H-76-512). In the District of Columbia Circuit, SSA Judge Werth has applied correctly res judicata grounds, but review of his opinion is delayed by Judge Harvey for reasons unknown, USDC(MD) H-77-129.

BASIS FOR LOWER COURT JURISDICTION.

This case had jurisdiction in the District of Columbia Circuit Appeal Court because the Secretary of Defense appealed the ruling of USDC(DC) 2671-69 as published in Dick v. U.S. 339 F. Supp. 1231.

ARGUMENT.

This case is controlling now only in the District of Columbia. However, based on CSCFPM 752-1-3(c) and CSCFPM 752-1-3(d), petitioner should be protected from further litigation in USCA(4) 78-1400 (C/A H-76-512) by removing "the heart of the matter." The simplest way is to order the James Wellhouse report removed from petitioner's record on grounds of res judicata or prohibit use of any part of that Wellhouse record not proven to be new evidence.

The burden of proof based on agreement in closing this case should not be on petitioner.

For the above reasons, a Writ of Prohibition on the use of the petitioner's medical diagnosis by Wellhouse in res judicata in the 4th Circuit proceedings should be granted.

Respectfully submitted,

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U.S. District Court For the District of Columbia

ADMINISTRATIVE LAW
Fair Hearing

Security clearance denial was improper where government psychiatrist received background information and applicant's psychiatrist did not and hearing examiner believed government psychiatrist because he had more background data.

Dick v. United States, Dist. Ct. D.C., Civil No. 2671-69, March 27, 1972. Opinion per Gasch, J. Donald H. Dalton for plaintiff. Benjamin C. Flannagan and Thaddeus B. Hodgdon for defendants.

GASCH, J.: This matter came on for consideration of motions by plaintiff Dr. Ronald Dick, for summary judgment and by defendant United States to dismiss and by the Secretary of Defense for summary judgment. Briefly stated, plaintiff seeks review of a decision by the Secretary to deny plainfiff's application for a secret security clearance and to revoke his confidential clearance pursuant to the procedures established by the Industrial Personnel Security Clearance Program, Department of Defense Directive 5220.6, 32 C.F.R. §155 (1970).

When Dr. Dick submitted his application for a secret clearance in 1967, he was referred to Dr. Louis Linn, a psychiatric consultant to the Department of Defense, for evaluation. After an interview of approximately one and a half hours, Dr. Linn concluded that Dr. Dick had "a Personality Pattern Disturbance (Paranoid Personality)" which was of a continuing nature and which constituted a significant defect in his judgment and reliability. Accord-

ingly, he recommended that the secret clearance be withheld on psychiatric grounds. Dr. Dick was then furnished a Statement of Reasons by the Screening Board and was advised of his right to a hearing before an examiner as set forth in 32 C.F.R. §155.7(a) and (b).

A hearing was subsequently conducted before an Examiner at which Dr. Linn testified concerning his conclusion that Dr. Dick was suffering from a paranoid personality. Dr. David Trachtenberg, a licensed physician with ten years' experience in the practice of psychiatry, testified that based on three interviews he had concluded that Dr. Dick suffered from no mental condition which would render him incompetent to handle secret material nor did he suffer from a paranoid personality. The regulations permit an applicant to call witnesses and present evidence in his behalf at the hearing.

The Examiner's Determination of March 12, 1969, concludes that on the basis of all the information of record it was not clearly consistent with the national interest to grant Dr. Dick a security clearance at any level. He stated that he had rejected Dr. Trachtenberg's testimony because, among other reasons,

> . . . cross-examination of the Doctor revealed that even though he had seen the Applicant on three occasions, as compared to Dr. Linn's one interview, he was woefully lacking in the basic facts concerning the Applicant's behavioral background during the past eleven years.

The conclusion of the Examiner was subsequently affirmed by the Appeal Board.

In support of its motion for summary judgment, the government contends that the scope of judicial review in this type of case is limited to a determination of whether the

plaintiff received a procedurally fair hearing and whether there is sufficient evidence in the record to support the Examiner's conclusion and asserts that those standards have been met.

* * *

There is no contention that Dr. Dick was denied any procedural rights such as confrontation and cross-examination of witnesses which are afforded him by the regulations. However, at the judicial hearing counsel for the government was questioned as to the source of the factual material concerning Dr. Dick's background which had been explored by Dr. Linn and which consequently led the Hearing Examiner to prefer Dr. Linn's evaluation. Counsel advised the Court that this information had been furnished to Dr. Linn from Department of Defense files and contained summaries of previous examinations and statements from other people who had had contact with Dr. Dick. This response is supported by testimony of Dr. Linn before the Examiner. (Hearing Transcript at 15). While there is no express indication that Dr. Linn relied on this material in forming his conclusion, neither is there an indication that he did not. The conclusion is virtually inescapable that he did so rely, particularly in view of the Examiner's favorable reaction to Dr. Linn's greater awareness of basic facts of Dr. Dick's behavioral background. The record is likewise silent as to whether Dr. Dick, his attorney, or his psychiatrist were permitted to view this material and counsel for the government conceded that they were not.

Access to evidentiary material in the possession of an administrative body which will be considered and relied upon by that body in making its ultimate determination

should ordinarily be afforded to the individual whose interest is at stake. *Goldberg v. Kelly*, 397 U.S. 254 (1970); *Escalera v. New York Housing Authority*, 425 F.2d 853 (2d Cir. 1970). Conversely, the full panoply of due process safeguards need not necessarily be afforded to the individual during the investigative, as opposed to the adjudicative, phase of an administrative proceeding. *Adams v. Laird*, 420 F.2d 230 (D.C. Cir. 1969). Had the government, in the instant case, attempted to introduce Dr. Dick's background file into evidence at the hearing before the Examiner, the applicant would ordinarily have been given access to that material, subject to certain exceptions. 32 C.F.R. §155.7(d). The difficulty presented by this case is that it did not. Rather, it made that material available to a psychiatrist who testified as an expert witness at the hearing and whose testimony was preferred by the Examiner in part because of the psychiatrist's greater familiarity with the details of Dr. Dick's background.

It is well established that the opinion testimony of a psychiatrist is admissible even though it may be based in part upon the reports of others which are not in evidence but upon which the psychiatrist customarily relies in the practice of his profession. *Jenkins v. United States*, 307 D.2d 637 (D.C. Cir. 1962). There can be no doubt but that information concerning an individual's background and prior behavior is relevant, material, and perhaps even crucial to the psychiatrist's evaluation and diagnosis.***

* * *

While these considerations lend some support to the government's contention that there was a rational basis for the Examiner's determination, they also support the conclusion that the material should have been made

available to the applicant. Access to this information might have enabled the applicant to rebut the validity of some of the details contained in the file and would have permitted the psychiatrist who testified in his behalf to explore more thoroughly the underlying details and to explain his interpretation of them as they related to his conclusions.

As our Court of Appeals observed in *United States v. Schappel*, 445 F.2d 716, 721 (1971), it would be intolerable automatically to accept the testimony of a government psychiatrist simply because he had greater opportunity to observe one committed to a governmental hospital than the private psychiatrist. Here, basic fundamental fairness requires that the government make available to plaintiff's psychiatric witness the same material made available to its own psychiatrist. This result is required since the Hearing Examiner accepted the conclusion of the government's psychiatrist because of the greater depth of his factual information.

Although plaintiff seeks an order restoring his revoked clearance and awarding the higher clearance for which he had applied, the proper course where procedural defects in the administrative process have been alleged and found is to remand for further proceedings. *McNamara v. Remenyi*, 391 F.2d 123 (9th Cir. 1969). Accordingly, the Court concludes that the matter must be returned to the agency for further proceedings in which it must either make the file available to the applicant and to the psychiatrist who will testify in his behalf or invoke the procedures set forth in section 155.7(d) if it deems them to be applicable and appropriate. The considerations previously discussed respecting psychiatric testimony argue strongly in favor of disclosure unless there are compelling reasons to the contrary.

One additional point warrants consideration. At the hearing Dr. Linn testified that when he asked Dr. Dick about his religious affiliations, his response was "rather obscure," "measured something unconventional," and was "therefore in line with the general theme that I was trying to develop in the report that Dr. Dick's way of thinking, acting and responding to a situation was not the normal, expected response." (Hearing Transcript at 31.) Obviously the function of an expert witness, particularly one for the government, is to report with objectivity his findings, not to support his preconceived notions. Section 155.4 of the regulations sets forth the policy and procedures to be followed in questioning applicants at all stages of the administrative process and in subsection (c) expressly precludes questions directed to the applicant's religious opinions or beliefs. Since the posing of such questions is prohibited, the psychiatrist should not have asked these questions in his interview with Dr. Dick nor should testimony have been received from him thereon or given consideration in the administrative record. Here, it appears that the government has ignored the basic principles set forth by the Supreme Court in *Service v. Dulles*, 354 U.S. 363 (1957). Even if the regulations were silent on this subject, which they are not, the probing of one's religious beliefs and the drawing of adverse interferences therefrom violates First Amendment principles.

> If there is any fixed star in our constitutional constellation,it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein. If there are any circumstances which permit an exception, they do not now occur to us.

The complaint also contains a claim for reimbursement of lost wages which the government has moved to dismiss on the ground that plaintiff has failed to exhaust his administrative remedies. In view of the disposition which the Court has made of the security clearance claim, further consideration of the reimbursement claim would be premature.

Accordingly, the case is remanded for further proceedings not inconsistent with this opinion.

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August 23, 1973

Mr. Henry L. Moore
Employee Appeals Examiner
Employee Appeals Branch
Division of Personnel Policy and Planning
Office of Personnel Training
Department of Health, Education and Welfare
Washington, D.C. 20201

In re: Dr. Ronald S. Dick
Operations Research
Analyst, Social Security
Administration
Baltimore, Md.

Dear Mr. Moore:

As attorney for Dr. Ronald S. Dick, I am submitting this brief in his behalf. It consists of four parts (1) Preliminary Statement (2) Summary of facts as developed in the record (3) Legal Argument and (4) Suggested remedies.

PRELIMINARY STATEMENT

In the grievance filed May 1, 1972, Dr. Dick pointed out that problems with the Department of Defense concerning

his security clearance, and originating from defense contractor employment prior to his service with the Social Security Administration, unduly influenced his decision to accept a GS-14 position. He also alleged that these problems subsequently engendered employment friction and requested a suitable reassignment. He then suggested possible remedies.

The grievant now contends that the interviews conducted by Mr. Moore in August 1972, and the hearings of June 14, 15, 1973 have clearly demonstrated that friction between Dr. Dick and Mr. Jacob A. Williams did arise because of the Department of Defense matter and that it resulted in:

1. Unfair treatment and harrassment by Mr. Williams that prevented Dr. Dick from optimum job performance and that interfered with the possibility of suitable reassignment or promotion.
2. Deception and coersion by Mr. Williams that caused Mr. Dick to be the victim of an involuntary reduction in rank.

FACTS

The grievant is a highly competent mathematical statistician and operations research analyst whose professional skills are held in the highest regard by his colleagues. His interest, ability and potential in these fields were demonstrated in his undergraduate work at Queens College where he graduated with a B.S. degree in 1955, being a member of Phi Beta Kappa. He was a graduate assistant and fellow at Columbia University, being awarded a Masters degree in Mathematical Statistics in 1957. In the next eleven years he was a teacher at Queens College and C.W. Post College, and conducted research projects for Sperry Gyroscope and ITT.

At the same time he continued his graduate education, occasionally taking leave without pay and received a Ph.D. in Mathematical Statistics from Columbia University in 1967.

The grievant has been described as ". . . a brilliant mathematician and in my opinion has more technical potential than any individual on the SSA operations research staff. . . I also further state that Dr. Dick is eccentric, he is naive and gentle and has difficulty functioning in a harsh environment." (Transcript of August 10, 1972, pp. 63 and 64).

He was thus unprepared when the student demonstration movement reached Queens College in 1961-62. He is also a stubborn man and his strong reaction to student interference with his teaching program led to differences with the school administration which was equally unprepared for the new breed of students.

He then was a member of the faculty at C.W. Post College until 1968. During this period the grievant had been interviewed by a number of psychiatrists. These visits began at the request of Queens College and were renewed at C.W. Post College. As a result of one interview his teaching contract at C.W. Post College was not renewed. As a result of another psychiatric interview the Department of Defense refused the grievant security clearance in March 1968, and he therefore had to give up his position with ITT. Other psychiatrists held the defendant to be a very stubborn man, which stubborness sometimes verges on the intense and may be unrealistic in that it concerns itself more with principle than practical importance.

In March 1972, the U.S. District Court for the District of Columbia reversed the Department of Defense decision

which was based on the previously mentioned psychiatric interview and remanded the case for further proceedings. Since the defendant is not, at present engaged in work of a security nature, he withdrew his request for clearance and the action terminated.

Thus, the grievant in June 1968 when he accepted employment with SSA and until March 1972 was engaged in a struggle to save his reputation and, in fact, his chosen career, as a professional mathematical statistician from decisions he considered arbitrary and ill-founded. The individual engaged in legal action with a department of the U.S. government, soon learns that he is facing an opponent of tremendous resources; only one who is stubborn, who believes in the justice of his cause, will find the strength to continue. To add to the traumatic experience in 1970, the grievant's attorney died, and for some time he was without legal representation.

There can be no question but that the grievant's personal difficulties influenced his decision to accept employment with SSA and his subsequent relations with his supervisor Mr. Jacob Williams. It is not surprising that he caused some difficulties for supervision. He needed strong, understanding leadership. It was not available. Yet he has performed his work in a satisfactory manner. (Transcript Aug. 10, 1972, p.63; June 15, 1973, p.105.)

The employment relationship between the grievant and Mr. Williams has been one that began under the most favorable auspices, flourished for a good part of two years, then deteriorated.

According to Mr. Williams (transcript Aug. 10, 1972, p. 79 *et sequitur*) the grievant was highly recommended for employment by the Chief Mathematical Statistician, SSA,

but the initial application was rated at GS-13. Mr. Williams then discussed the situation with the Civil Service Commission, saw to it that additional information was presented and it was rerated at a GS-14, Operations Research Analyst.

The suggestion that it was unrealistic for the grievant to seek a GS-15 position at the time of hire has no validity. In 1968, he had completed his Ph.D. program and had been employed as a teacher and research engineer for better than eleven years. A reference to the Civil Service Commission qualification standards for Mathematical Statistician shows that a Ph.D. in an appropriate program and three years of professional experience, provided that at least one year of the required experience was at a level of difficulty comparable to that of a GS-14, quality fn applicant for employment at the GS-15 level. Mr. Bennett's testimony was to the same effect. (Transcript, June 15, 1973, p.145)

In September 1969, on Mr. Williams recommendation, the grievant was reassigned to the position of Supervisory Operations Research Analyst, GS-14. According to the memorandum of August 15, 1969 (Transcript of June 14, 1973, p.16) from Robert M. Ball, Commissioner of Social Security, the grievant had been the acting Supervisor for 14 months and performed in an outstanding manner. The testimony of Mr. Cohen also shows that the grievant had acted as supervisory from February 1969 until his official appointment on September 1969. (Transcript August 10, 1972, p.57)

According to the grievant, his relationships with Mr. Williams began to deteriorate in November, 1969 (Transcript, June 14, 1973, p.19,20). In December, 1969, Mr. Williams urged the grievant to drop the security case and implied that the grievant would not get further promotions

(p.19). The testimony of Mr. Cohen supports the grievant in the contention that Mr. Williams reacted unfavorably to the security case, e.g. ". . . Mr. Williams seemed to be very unhappy with the fact that Dr. Dick was pursuing this action, and he made it known a number of times to me as well as Dr. Dick. . . he called me in I think after or prior to the time that Dr. Dick had filed the grievance, I don't remember exactly when, and he said that he had notified the authorities, but he didn't specify who, and that Dr. Dick and threatened to give away government secrets." (Transcript June 15, 1973, p.122, 123).

Mr. Williams' testimony also suggests that his relations with Dr. Dick began to deteriorate in the fall of 1969 (Transcript, August 21, 1972, p.83). However he subscribes the change to the grievant's preempting secretarial services and unrealistic standards in evaluating analysts assigned to him (p.83). Mr. Williams also denied that the DOD matter had any bearing on the grade level at which the grievant was hired or considered for promotion (Transcript August 21, 1972, p.92) In view of the fact that the grievant had functioned as a supervisor since February 1969, it seems a strange coincidence that the difficulties proffered by Mr. Williams as the cause of the friction with Dr. Dick should surface the fall of 1969 at the same time as the security case became a troublesome issue.

The record does show that Mr. Williams had become unhappy with Dr. Dick as a supervisor. In August, 1970, Mr. Williams suggested to the grievant that he become a consultant to the whole staff and give up his supervisory position (Transcript August 21, 1973, p.84; June 14, 1973, p.21, 22). The grievant and Mr. Williams disagree as to whether Mr. Williams agreed to propose the position at the GS-15 level. But it is clear that Mr. Williams had without

proper authority, unofficially reassigned the grievant with his consent, from his supervisory position. The grievant's understanding that he should write up a GS-15 position description is consistant, in the absence of specific word to the contrary, with Mr. Williams' earlier statement that the grievant and Mr. Cohen were to have GS-15 positions (Transcript June 15, 1973, p.137).

In August, 1970, Mr. Williams also took away the secretary of the grievant, again without the official approval of the Personnel Office and despite the fact that the official position description showed the incumbent to be directly responsible to the grievant (Grievant Exhibit No. 7). At the same time Mr. Williams unofficially placed both Branches under the supervision of Mr. Cohen. The latter action was also taken without any formal detail or reassignment action, contrary to law and regulation.

From the record compiled by the Examiner we learned that next, on December 14, 1970 Mr. Williams wrote a memorandum to Mrs. Benjamin of the personnel staff in which he was very critical of the grievant as an employee. This was not known to the grievant (Transcript June 14, 1973, p.29).

In January, 1971 Mr. Williams made a formal proposal to the Assistant Commissioner for Administration, in which he again recommended establishing two Branches, each headed by a GS-15 (Grievant Exhibit No. 5). The record is not clear as to the extent of publication given to this proposal within the Operations Research Staff. But it is clear that Mr. Williams did not make it available to nor discuss it with the grievant (Transcript June 14, 1973, p.22)

In February, 1971, an adverse psychiatric report of Dr. Manos became available to Mr. Williams. The grievant was

not aware of this (Transcript August 9, 1972, p.28).

On March 1, 1971, the grievant signed a request to be reassigned from Supervisory Operations Research Analyst GS-14 to Senior Operations Research Analyst GS-14. It became effective April 4, 1971. The testimony of Mr. Williams treats the matter as routine (Transcript August 21, 1972, p.86-88). Mr. Williams also testified that the grievant attempted to revoke the request after someone else had filled the position (p.87). The latter statement is obviously incorrect as the grievant attempted to withdraw the request by memoranda of April 19 and April 20, 1971. Mr. Williams informed him that the action had been completed but that the position would be posted and he could compete. In fact it was not posted and was filled by Mr. Hack in July of 1971.

For the grievant March 1, 1971 was a very difficult day (Transcript June 14, 1973, p.22,24,25,26,27). Three times he was approached by Mr. Williams to sign a memorandum requesting reassignment to a non-supervisory position. Twice he said "No". The third time, with a paragraph added to show that he was seeking a higher position, and believing that if he refused to sign, he would not receive assignments and might be denied a within-grade increase, the grievant signed. Obviously this was not a voluntary act. The cross examination does not weaken this conclusion (Transcript June 14, 1973, p.64, 65).

The testimony of Mr. Cohen not only supports the grievant's contention but also indicates that Mr. Cohen was acquainted with the pressure tactics of Mr. Williams (Transcript June 15, 1973, p.141). Dr. Lessing also testified that he was surprised to hear that the grievant had signed a memorandum giving up his supervisory position. The preponderance of evidence is that the grievant wanted to be a

GS-15; that the top level staff was aware that the only change for such a grade was to be a Branch Chief; that the grievant is intelligent but naive. There is no reasonable basis to conclude that the grievant would sign a request to be assigned to a position which would afford him virtually no opportunity for a GS-15 position while in ORS. The logical conclusion is that he was deceived or coerced, the testimony, taken as a whole urges the latter. In opposition is only the unsupported word of Mr. Williams.

In March 1971, the grievant filed a claim for disability benefits which was eventually denied. He reasoned that if the Department of Defense had made a correct judgment with regard to his mental health, then he was not able to perform competently. As his supervisor Mr. Williams was asked for comment and declared that the grievant was a competent supervisor (Transcript June 14, 1973, p.29,30).

Beginning in 1970, the grievant was harassed and his work made more difficult by the actions of Mr. Williams. He lost his secretary; he was moved to cramped quarters; when he undertook the BDI project; the grievant requested the same basic training provided his predecessor, but Mr. Williams delayed for three months before assenting. Moreover Mr. Williams failed to provide normal administrative or managerial support to the grievant (Transcript June 14, 1973, p.38,39,40; See also Lessing testimony, June 15, 1973, p.110-115). Finally there is the bizarre incident of the inscription placed on the bulletin board in Room P 105 by Mr. Williams. The evidence leaves no doubt that Mr. Williams perpetrated this act. There is no doubt that it caused much distress, not only to the grievant, but also to other members of the staff. We are not aware of Mr. Williams' motive. But the result was additional harassment of the grievant. (See testimony of Cohen, Dick and Holman).

During the remaining months of 1971 and early 1972, the grievant continued to carry out his assignments and attempted to discuss his problems with Mr. Williams. Mr. Williams refused to see him (Transcript June 14, 1973, p.91; August 10, 1972, p.60).

Finally the grievant filed the subject grievance on May 1, 1972. Mr. Williams' reaction was to immediately prepare a comprehensive statement containing numerous unsubstantiated allegations and recommended that the grievant be fired (Grievant Exhibit 1). Mr. Cohen as the "first state official" also made a recommendation. He recommended that the grievant be reassigned and given the opportunity to perform meaningful and independent research (Transcript August 10, 1972, p.63,64).

Mr. Cohen soon received treatment similar to Dr. Dick. On June 30, 1972 without official personnel action, Mr. Williams reassigned the entire staff of Mr. Cohen, leaving only Dr. Dick to supervise.

Strangely on May 30, 1972, Mr. Williams wrote to the grievant's wife, suggesting the need for counseling, but in no way suggesting that the grievant should be fired. Again, in the performance rating given for the year ending September, 1972, Mr. Williams as the reviewing official rated the grievant highly.

The past few months have seen the dissolution of ORS. Most of the personnel have been reassigned. The grievant is on detail to another office, and is not aware of his permanent reassignment.

* * * *

Respectfully submited

Daniel E. Matthews
Attorney for Ronald S. Dick

THE U VERSITY OF NORTH CAROLIN.
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THE SCHOOL OF MEDICINE
DEPARTMENT OF PSYCHIATRY

March 19, 1975

Donald B. Hill, Chief
Employee Relations Brahch
Division of Personnel
Department of Health, Education, and Welfare
Social Security Administration
Baltimore, Maryland 21235

Dear Mr. Hill:

I have received Dr. Wellhouse's reports as well as the case file on Mr. Dick. I have also talked with Dr. Wellhouse and my own attorneys, the latter group because I could find no precedents for making this type decision.

Based on my experience with other patients, the opportunity to review one's own psychiatric report does not usually lead to harm to the patient or to anyone else. Sometimes, in fact, the patient is benefited from this experience. In Dr. Dick's case, there appears to be little in Dr. Wellhouse's report that Dr. Dick has not heard before. Since I have not examined Dr. Dick personally, I could not with reasonable medical certainty predict how he would react to the material. My experience with other cases and my review of the material enables me to no more than speculate that access to the material would not be harmful. Dr. Wellhouse incidently feels similarly. My attorneys have

advised me that it would be best if the materials were released pursuant to court order.

I apologize for my inability to be more affirmative but in the absence of legal criteria for releasing information, and particularly, since I did not examine Dr. Dick, I can do no more than speculate.

Sincerely,

Seymour L. Halleck, M.D.
Professor of Psychiatry

SLH:bme
cc: Dr. R.S. Dick

MILTON F. SHORE, PH.D.
418 LAMBERTON DRIVE
SILVER SPRING, MARYLAND 20902
TELEPHONE 593-5487

DIPLOMATE IN CLINICAL PSYCHOLOGY
AND OF PROFESSIONAL PSYCHOLOGY (ABPP)

CERTIFIED PSYCHOLOGIST, STATE OF MARYLAND
LICENSED PSYCHOLOGIST, DISTRICT OF COLUMBIA

April 23, 1976

Dr. Ronald S. Dick
1412 Chilton Drive
Silver Spring, Maryland 20904

Dear Dr. Dick:

Dr. Brenda Gurel of the American Psychological Association recently informed me that you reported that my psychological report on you, written for James Wellhouse, M.D., may have been used in whole or in part by the Social Security Administration to support a decision that you be terminated.

I wish to make it clear that if the report was so used in that manner by the Administration, it was done without my permission or consent. The report in no way suggested or recommended termination, and any such conclusion was contrary to my findings.

I hope this sets the record straight and that things will work out for you in a way that is satisfying.

Sincerely,

Milton F. Shore

Milton F. Shore, Ph.D.

No. 78-238

In the Supreme Court of the United States

OCTOBER TERM, 1978

RONALD DICK, PETITIONER

v.

UNITED STATES OF AMERICA

ON MOTION FOR LEAVE TO FILE A PETITION FOR A WRIT OF PROHIBITION

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

WADE H. MCCREE, JR.
Solicitor General
Department of Justice
Washington, D.C. 20530

In the Supreme Court of the United States

OCTOBER TERM, 1978

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UNITED STATES OF AMERICA

ON MOTION FOR LEAVE TO FILE A PETITION FOR A WRIT OF PROHIBITION

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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1. Petitioner seeks leave to file a petition for a writ of prohibition against the United States to prevent the use of a psychiatric diagnosis of petitioner.

This diagnostic report is discussed in *Dick* v. *United States,* 339 F. Supp. 1231 (D. D.C. 1972), an action brought by petitioner to challenge the denial of a security clearance. Petitioner had been denied the clearance on the basis of the conclusion of an examining psychiatrist, Dr. Louis Linn, that petitioner suffered from a paranoid personality disorder. The district court remanded the case to the agency to allow petitioner's expert witness to review the background information that the agency had provided to Dr. Linn. Since petitioner had accepted employment with the Social Security Administration for which no security clearance was required, he did not pursue the matter further (Pet. App. 11a).

Subsequently petitioner was involuntarily retired from his position with the Social Security Administration based on a finding that he was totally disabled because of his psychiatric condition. Petitioner argues that the Social Security Administration physician, Dr. James Wellhouse, did not make a new diagnosis, but instead fraudulently put forth the diagnosis made by Dr. Linn. Petitioner apparently contends that reliance on the Linn report would violate the decision in *Dick* v. *United States, supra.*

2. Petitioner seeks a writ of prohibition ordering the United States to remove the allegedly fraudulent Wellhouse report from his files and prohibiting any further use of any part of the report that is not shown to be new evidence. But the writ of prohibition is a "drastic and extraordinary" remedy that "should be resorted to only where appeal is a clearly inadequate remedy." *Ex parte Fahey,* 332 U.S. 258, 259-260 (1947). There is no reason for the Court to exercise this extraordinary power in the instant case, because adequate judicial remedies are available to petitioner.

Petitioner sought judicial review of his dismissal from the Social Security Administration. His appeal from the order of the United States District Court for the District of Maryland granting summary judgment for the Secretary in that action is pending in the United States Court of Appeals for the Fourth Circuit. *Dick* v. *Califano,* No. 78-1400. We are advised by the clerk of that court that the briefs have not yet been filed. Because the gist of petitioner's complaint before this Court appears to be that the Social Security Administration and the Maryland district court erroneously relied on the Wellhouse report, when it was no more than the supposedly discredited Linn report, petitioner should

present these arguments in the first instance in his pending appeal in the Fourth Circuit.[1] Then, if he is unsuccessful, he can present his contentions to this Court by a petition for a writ of certiorari.

It is therefore respectfully submitted that the motion for leave to file a writ of prohibition should be denied.

WADE H. MCCREE, JR.
Solicitor General

SEPTEMBER 1978

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[1]Petitioner also has raised the same or similar issues in two cases brought against Dr. Wellhouse. *Dick* v. *Wellhouse,* D. D.C., No. 75-0343, dismissed July 25, 1975; *United States ex rel. Dick* v. *Wellhouse,* D. D.C., No. 78-0001, dismissed March 10, 1978, aff'd, C.A. D.C., No. 78-1350, May 22, 1978.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-238

RONALD DICK,

Petitioner,

v.

THE UNITED STATES,

Respondent.

MOTION FOR LEAVE TO FILE AND PETITION FOR WRIT OF PROHIBITION

REPLY BRIEF

Pro Se
RONALD DICK
1412 Chilton Drive
Silver Spring, Maryland 20904
Tel: (301) 384-7234

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IN THE

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OCTOBER TERM, 1978

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v.

THE UNITED STATES,

Respondent.

MOTION FOR LEAVE TO FILE AND PETITION FOR WRIT OF PROHIBITION

REPLY BRIEF

1412 Chilton Drive
Silver Spring, MD 20904
September 18, 1978

Clerk
Supreme Court of the United States
Washington, D. C. 20543

Re: Dick v. U.S. 78-238; Agreement with Solicitor General.

Dear Sir:

I have received late a "Memorandum for the United

States in Opposition" to my Motion. I agree with the arguments set forth by Wade H. McCree, Jr., Solicitor General, if the United States Court of Appeals for the Fourth Circuit, Dick v. Califano, No. 78-1400, has jurisdiction over the total question in this case and/or the District of Columbia Doctor, James Wellhouse.

Hence, petitioner now alleges primary jurisdiction by the Fourth Circuit, and I have served by certified mail that Circuit with four copies of the Motion in 78-238 as part of a conference motion to the Fourth Circuit. However, the U. S. Attorney for Califano denys Fourth Circuit jurisdiction, and he is joined by the U. S. Attorney for Dr. Wellhouse in U. S. ex rel Dick v. Wellhouse, C.A. D.C. No. 78-1350, who claims a D.C. Circuit question cannot be united to 78-1400 in the Fourth Circuit.

For these reasons, I ask the question in U.S.S.C. 78-238 be transferred under 28 U.S.C. §2241(b) to the Fourth Circuit at 78-1400 (or for reconsideration in the D.C. Circuit at 78-1350) if the receiving Court has jurisdiction. If neither of these two Appeal Courts has jurisdiction on the total question, I request the case stay before the Supreme Court unless the Solicitor General or this Court has a better solution.

Sincerely yours,

/s/ Ronald Dick 9/18/78
RONALD DICK
Petitioner, Pro Se.
Tel: (301) 384-7234

c.c.: Solicitor General
U.S. Attorney, Baltimore
U.S. Attorney, D.C.

UNITED STATES COURT OF APPEALS FOR THE 4TH CIRCUIT

RONALD DICK,
Appellant,

v. No. 78-1400
(C/A 76-512)

JOSEPH A. CALIFANO, et al.,
Appellees.

MOTION FOR CONFERENCE WITH COURT AND APPELLEES FOR TWO REASONS.

1. Appellant calls for a conference based on Appellee Alan Campbell's (CSC) letter of July 13, 1978, finding appellant "restored to earning capacity" which changes the nature of this case significantly.

2. Appellant calls for a conference based on Appellant's filing on August 10, 1978, with the United States Supreme Court in Washington, D.C. at 78-238.

3. Appellant suggests a meeting as soon as possible at the time and place set by the Court, and all matters be stayed until that meeting.

/s/ Ronald Dick 8/15/78
RONALD DICK
APPELLANT, Pro Se
1412 Chilton Drive
Silver Spring, MD 20904
Tel: (301) 384-7234

Ex: USC 78-238